IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.884 OF 2002

B.G.Dani .. Petitioner
Versus
State and Anr. . .. Respondents

Mr.V.V.Purwant for petitioner
Mr.P.A.Pol, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 14th September 2006.

P.C.

. Submission of Mr.Purwant, learned Counsel appearing for complainant is that the contents of the notice at Exh.A would demonstrate that the said notice is issued by the applicant- original complainant on behalf of his clients Shankar Singh and others legal heirs of late Shri Mirchusingh Kundiyasingh Labsna at Ulhasnagar. A counter public notice issued by the second respondent's Advocate mentions that the public

notice given by the applicant is with ulterior motive to blackmail the second respondent's clients, Smt.Rekha Manohar Chablani and Manohar Chablani.

2. On the basis of the contents of the last para of the public notice at Exh.B, the applicant moved the criminal court and filed a complaint being case No.109 of 1999 alleging offences punishable under section 500 of I.P.C. The complaint was dismissed by Civil Judge, Junior Division and J.M.F.C. Ulhasnagar on 30th September 1999. In the opinion of learned Magistrate, the complaint is liable to be dismissed because 9th exception to section 499 would operate and the alleged imputation cannot be called as defamation of the complainant/ petitioner before him.

3. That order was challenged before the Additional Sessions Judge Kalyan in Criminal

Revision Application No.71 of 1999 which has been dismissed on 9th January 2002.

4. The contention of Mr.Purwant is that the imputation in the notice at Exh.B is clearly with regard to the petitioner because his name has appeared in the said para. In such circumstances, both, the learned Magistrate and the Revisional Court were in clear error in refusing to take cognisance of the complaint.

5. The 9th exception to section 499 of I.P.C. reads thus:-

> "Ninth Exception:- Imputation made in good faith by person for protection of his or other's interests:- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person

making it, or of any other person, or for the public good."

6. That apart, section 499 which falls under chapter XXI and deals with defamation. Reference can be made to The explanation 4 which reads thus:-

"Explanation 4:- No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a lothsome state, or in a state generally considered as disgraceful."

7. In my view, the Public Notice which is issued on behalf of one of the clients of petitioner has been replied by the respondent No.2 on behalf of his clients. There is no question of the petitioner as an Advocate or professional being defamed. It is the conduct of the parties/litigants/clients which is being referred to and the imputation, if any, is not directed towards professionals who are rendering their services as such.

8. In such circumstances and taking a broad view of the matter, I do not find that the courts below were in any error in not taking cognisance of the complaint. Even otherwise, in my view, in my inherent jurisdiction, this is a fit case where the views of the courts below deserve to be upheld. The parties are professionals and should, as senior members of Bar, be deemed to be aware of their responsibility to the profession as well as to their clients. Petition dismissed.

(S.C.Dharmadhikari, J)